

AMENDED IN ASSEMBLY MAY 23, 2002

AMENDED IN ASSEMBLY APRIL 30, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2416**

**Introduced by Assembly Member Bates**

February 21, 2002

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An act to add Section 12302.6 to the Welfare and Institutions Code, relating to social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2416, as amended, Bates. In-Home Supportive Services program.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

Existing law requires each county to establish, or act as, an employer for IHSS personnel for purposes of provisions of statutory law regarding employer-employee relations.

This bill would *require the State Department of Social Services to establish a pilot program in 3 counties that choose to participate to* require each county's IHSS employer of record to maintain a registry of providers who are available to provide services as an IHSS provider. The bill would require that the registry denote any IHSS provider who

has voluntarily submitted to a criminal background check and obtained a criminal record clearance. The bill would further require that the registry additionally denote any individual who has obtained the criminal record clearance and has expressed a preference to be considered for immediate placement in temporary work. The bill would ~~provide that it shall not preclude a county from developing and enforcing criminal background check requirements that are stricter than those provided for in the bill~~ *require the department to report to the Legislature, by January 1, 2007, on the results of the pilot program.*

~~Because the bill would require each county to perform additional duties in administering the IHSS program, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes no*.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12302.6 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 12302.6. (a) ~~Each~~ *The department shall establish a pilot*
- 4 *program in three counties that choose to participate in the registry*
- 5 *program established by this section. The department shall attempt*
- 6 *to include a county that has established a public authority for*
- 7 *purposes of the in-home supportive services program, and a*
- 8 *county that does not have a public authority, among the three*
- 9 *counties.*
- 10 (b) *In each pilot county, each employer of in-home supportive*
- 11 *service providers as determined pursuant to Section 12302.25*

1 shall maintain a registry of providers who are available to provide  
2 services for recipients pursuant to this article.

3 ~~(b)~~

4 (c) (1) The registry required by this section shall denote any  
5 provider who has voluntarily submitted to a criminal background  
6 check and obtained a criminal record clearance pursuant to  
7 subdivision (e).

8 (2) The registry shall additionally denote any provider who has  
9 obtained a criminal record clearance pursuant to subdivision ~~(d)~~  
10 (e) and who has expressed a preference to be considered for  
11 immediate placement in temporary work.

12 ~~(e)~~

13 (d) Providers who submit to a criminal background check for  
14 any purpose described in subdivision ~~(b)~~ (c) shall not be charged  
15 for the cost of obtaining the criminal background check, except  
16 that they may be assessed the usual and customary fee for the cost  
17 of the rolling of fingerprints by a law enforcement agency or for  
18 obtaining a fingerprint scan using livescan technology.

19 ~~(d) This section shall not preclude a county from developing~~  
20 ~~and enforcing criminal background check requirements that are~~  
21 ~~stricter than those provided for in this section.~~

22 (e) (1) To obtain a criminal record clearance for purposes of  
23 subdivision ~~(b)~~ (c), the individual shall obtain fingerprints from a  
24 law enforcement agency or other local agency authorized to take  
25 fingerprints. The individual shall submit the fingerprints to the  
26 State Department of Social Services with a completed form, as  
27 prescribed by the department for this purpose. The department  
28 shall transmit the fingerprint record and a copy of the form to the  
29 Department of Justice. As an alternative, when available, ~~live scan~~  
30 *livescan* technology may be used pursuant to this paragraph.

31 (2) The Department of Justice shall search the state and Federal  
32 Bureau of Investigation criminal history information for a  
33 criminal record.

34 (3) If the individual has been convicted of a crime, other than  
35 a minor traffic violation, the Department of Justice shall provide  
36 ~~to the employer of record that criminal record. If that information~~  
37 *to the department. The department shall notify the employer that*  
38 *the individual has been convicted of a crime other than a minor*  
39 *traffic violation and that an appeal pursuant to paragraph (5) is*  
40 *available.*

1 (4) If no criminal record information has been recorded, or if  
2 the record is limited to minor traffic violations, the Department of  
3 Justice shall provide the individual with a clearance stating that  
4 fact.

5 ~~SEC. 2. Notwithstanding Section 17610 of the Government~~  
6 ~~Code, if the Commission on State Mandates determines that this~~  
7 ~~act contains costs mandated by the state, reimbursement to local~~  
8 ~~agencies and school districts for those costs shall be made pursuant~~  
9 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~  
10 ~~2 of the Government Code. If the statewide cost of the claim for~~  
11 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~  
12 ~~reimbursement shall be made from the State Mandates Claims~~  
13 ~~Fund. the department and the employer of record with a statement~~  
14 ~~of that fact.~~

15 (5) The department shall establish a process for individuals  
16 convicted of a crime other than a minor traffic violation to appeal  
17 the denial of a clearance. The process shall be similar in scope and  
18 method to the process used by the department for community care  
19 facilities, pursuant to Section 1522 of the Health and Safety Code.  
20 The department may exclude convictions for certain crimes from  
21 the appeals process, provided these crimes have a direct  
22 relationship to the individual's capacity to deliver domestic and  
23 personal care services.

24 (f) Each participating county shall submit annual reports to the  
25 department on the operation of this section. The information  
26 reported shall include all of the data specified in subdivision (g)  
27 and any other information as determined by the department.

28 (g) The department shall submit a report to the appropriate  
29 policy and fiscal committees of the Legislature on the results of the  
30 pilot program established by this section on or before January 1,  
31 2007. The department shall include, but not be limited to, all of the  
32 following information in its report:

33 (1) The counties that chose to participate in the project and the  
34 number of in-home supportive services providers in each county.

35 (2) The number of providers in each pilot county that  
36 voluntarily submitted to a criminal background check and the  
37 number of providers that did not.

38 (3) Of those providers submitting to a criminal background  
39 check, the number that received a clearance, the number convicted

- 1 *of a crime other than a minor traffic violation, and the number*
- 2 *requesting an appeal.*
- 3 *(4) The number of referrals from the registry to recipients of*
- 4 *in-home supportive services, and other uses of the registry.*

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